

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JACK JONES

Claimant

VS.

KIRK MAYER, INC.

Respondent

AND

CNA INSURANCE COMPANY

Insurance Carrier

Docket No. 177,058

ORDER

ON the 3rd day of February, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Shannon S. Krysl dated December 28, 1993, came on before the Appeals Board for oral argument.

APPEARANCES

Claimant appeared by his attorney, Andrew E. Busch, of Wichita, Kansas. Respondent and insurance carrier appeared by their attorney, Rex W. Henocho, of Kansas City, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge.

ISSUES

By Order dated December 28, 1993, Administrative Law Judge Shannon S. Krysl approved a proposed vocational rehabilitation plan. The respondent and insurance carrier have requested review of that Order and contend the Administrative Law Judge exceeded her jurisdiction and authority in this matter.

The issues before the Appeals Board are:

- (1) Whether the Administrative Law Judge exceeded her jurisdiction in approving the vocational rehabilitation plan, and
- (2) Whether the Appeals Board has jurisdiction to review this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The Appeals Board finds that it does not have jurisdiction over this preliminary hearing matter. Therefore, the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated December 28, 1993, remains in full force and effect.

Before the Appeals Board can exercise jurisdiction over a preliminary hearing matter, the issues must be one of those enumerated in K.S.A. 44-534a or the Administrative Law Judge must have exceeded her jurisdiction as required by K.S.A. 44-551. As set forth below, the Appeals Board does not have jurisdiction over this matter under either statute.

K.S.A. 44-534a(2), as amended by the 1993 Kansas Legislature, provides that the following issues are deemed jurisdictional and subject to review by the Appeals Board: 1) Whether the employee suffered an accidental injury; 2) Whether the injury arose out of and in the course of employment; 3) Whether notice is given or claim timely made; and 4) Whether certain defenses apply.

As the issue before the Appeals Board is not one of those enumerated above, the Appeals Board does not have jurisdiction under the provisions of K.S.A. 44-534a. Therefore, before the Appeals Board can entertain this review, it must be established that the Administrative Law Judge has exceeded her jurisdiction and authority as required by K.S.A. 44-551.

(2) Under the former version of K.S.A. 44-534a, the Administrative Law Judge is empowered to adjudicate the issues of the furnishing of medical treatment, payment of temporary total disability benefits, and any matter relative to the furnishing of vocational rehabilitation. Therefore, the Administrative Law Judge has not exceeded her jurisdiction or authority in ordering the respondent and insurance carrier to provide vocational rehabilitation services pursuant to the proposed plan. As provided in K.S.A. 1992 Supp. 44-534a(b), the respondent and insurance carrier may be reimbursed from the workers compensation fund should it be later found upon a full hearing on the claim that the amount of compensation which the employee is entitled is less than the amount paid.

(3) In this case the Appeals Board notes that no record was made of the proceedings before the Administrative Law Judge held on December 28, 1993. It should be noted that it is the duty of the aggrieved party to request a record for appellate purposes.

(4) Claimant contends the Order of the Administrative Law Judge was the result of an agreement between the parties and should be treated as a stipulated or agreed order. Such agreements should be so noted on the face of the document, signed by all parties, set forth on the record, or in some other manner sufficiently identified as an agreement of the parties. The Administrative Law Judge's Order of December 28, 1993, is not identified as an agreed or stipulated order, nor does it contain any statement within the body of the document that it represents the agreement of the parties.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated December 28, 1993, remains in full force and effect as the Appeals Board is without jurisdiction to review same.

IT IS SO ORDERED.

Dated this ____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Andrew E. Busch, 1540 North Broadway, Suite 205, Wichita, Kansas 67214
Vincent Bogart, 1600 Epic Center, 301 N. Main, Wichita, Kansas 67201
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Shannon S. Krysl, Administrative Law Judge
George Gomez, Director